

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- x

INTEGRATED COMMUNICATIONS &
TECHNOLOGIES, INC., et al.,

Plaintiffs,

v.

HEWLETT-PACKARD FINANCIAL SERVICES
COMPANY, et al.,

Defendants.

:
:
:
:
:
:
:

Civil Action No.
1:16-cv-10386-LTS

----- x

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

STATUS CONFERENCE

Friday, January 11, 2019
2:34 p.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
One Courthouse Way, Suite 5209
Boston, Massachusetts 02210
raeufp@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiffs:

LAW OFFICE OF DIMITRY JOFFE
BY: DIMITRY JOFFE
230 Park Avenue
10th Floor
New York, New York 10169
(212) 309-8711
dimitry@joffe.law

LAW OFFICE OF JOSH MCGUIRE
BY: JOSHUA A. MCGUIRE
51 Winchester Street
Suite 205
Newton, Massachusetts 02461
(617) 461-6400
josh@joshmcguirelaw.com

On behalf of the Defendants:

GIBBONS, P.C.
BY: ANTHONY P. CALLAGHAN AND PAUL A. SASO
One Pennsylvania Plaza
37th Floor
New York, New York 10119
(212) 613-2015
acallaghan@gibbonslaw.com

CHOATE HALL & STEWART LLP
BY: MICHAEL H. BUNIS
Two International Place
100-150 International Place
Boston, Massachusetts 02110
(617) 248-4030
mbunis@choate.com

1 before?

2 MR. JOFFE: I did. I just don't remember whether
3 it is holographic. It's more like what you find on the
4 credit card, you know those Visa.

5 THE COURT: Right, the silver.

6 MR. JOFFE: Right. The holographic with --

7 And so according to H3C itself, it's that, the
8 counterfeiting of the logos that tells you whether the
9 equipment itself is counterfeit or not, not the power-on test
10 and not really other tests. Because again, if you look at --

11 THE COURT: So your view is it's counterfeit
12 because H3C said so, for two reasons.

13 MR. JOFFE: Yes. Yes.

14 THE COURT: H3C said so, and H3C said to the
15 Chinese police that the method that you understand HP to have
16 used in the US is not a method that's reliable enough to
17 determine it.

18 MR. JOFFE: It's not suitable.

19 THE COURT: So your view, then, is it's counterfeit
20 based on that.

21 MR. JOFFE: Our view is that it's counterfeit based
22 on that, on the statement of the manufacturer and the
23 trademark holder.

24 THE COURT: How are you going to prove that at
25 trial?

1 MR. JOFFE: Your Honor, we -- we are attempting to
2 secure certified copies of the Chinese police reports that
3 will present it and, I believe, under the federal rules of
4 evidence, there is an exception to the hearsay for certified
5 business records or reports maintained in the regular course
6 of business. For foreign documents, they ought to be
7 certified, and with certification they will be acceptable
8 under hearsay rule --

9 MR. CALLAGHAN: Your Honor, not to interrupt, but
10 number one, we're not aware of a couple of these positions,
11 but we're certainly not aware that an attempt is being made
12 to get a certified copy.

13 I'm assuming you're talking about federal rule of
14 evidence 44(a) (2). And even if that were the case --

15 THE COURT: 44?

16 MR. CALLAGHAN: -- we're still at the question Your
17 Honor just asked.

18 THE COURT: I don't know if there is a Rule 44.

19 MR. CALLAGHAN: My notes may be in error here, Your
20 Honor. I don't have a copy of the rules.

21 THE COURT: There's Rule 803(8), a record or
22 statement of a public office.

23 MR. CALLAGHAN: And Your Honor, of course, we would
24 object to the introduction of a police report under 803(8),
25 as well. But that -- we were probably premature on some of

1 this.

2 THE COURT: Yes. This is not a criminal case, and
3 the rule has different provisions for those cases.

4 But -- all right. So what you -- the way you see
5 the issue playing out, as it goes forward, is that your view
6 is they are counterfeit, based on these -- essentially these
7 two reasons, and that the way you anticipate proving that is
8 you hope to get some sort of certified -- some docket, some
9 record of documents from the Chinese authorities reflecting
10 what you have described to me, what you understand to be the
11 facts, and some sort --

12 MR. JOFFE: Reflecting statements of H3C security
13 expert.

14 THE COURT: Right.

15 MR. JOFFE: To the police.

16 THE COURT: To the Chinese police. And you have to
17 get some sort of record of the statement that he or she made
18 then, and then introduce that document in opposition to their
19 motion for summary judgment, premised on -- assuming an
20 expert who says what he says, and/or at trial introduce
21 documents to that effect.

22 MR. JOFFE: This is one, Your Honor.

23 THE COURT: Yeah.

24 MR. JOFFE: Second is defendants themselves, in
25 2013, inspected the equipment, checked the pictures of the